

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2175.05
COMPLAINT INVESTIGATOR:	Jennifer Campbell
DATE OF COMPLAINT:	September 24, 2004
DATE OF REPORT:	October 22, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	November 29, 2004

COMPLAINT ISSUES:

Whether the Kankakee Valley School Corporation and Cooperative School Services violated:

511 IAC 7-27-7(e) by failing to have an individualized education program (IEP) in effect for the Student at beginning of the 2004-2005 school year.

511 IAC 7-27-5(d) by failing to obtain consent for a revised IEP that involves a change of placement as defined in 511 IAC 7-17-13.

FINDINGS OF FACT:

1. The Student has been identified as having autism spectrum disorder and communication disorder and has been determined eligible for special education and related services.
2. During the 2002-2003 school year, the School implemented the Student's individualized education program (IEP) that called for the Student to be in general education classrooms for art, music, physical education, library, science, health, and social studies, with the support of a paraprofessional, and to receive direct special education in a special education classroom for all other academic areas including reading, spelling, math, and language arts. The initiation date of this IEP (May 2002 IEP) was May 2, 2002, and the duration date was May 1, 2003. The Student's least restrictive environment (LRE) placement was summarized as "Resource" special education services and any related services provided outside of the general education setting for 21% — 60% of the instructional day. On August 30, 2002, and on October 29, 2002, the CCC reconvened. On November 11, 2002, the Complainant consented to the May 2002 IEP as revised by the CCC on October 29, 2002.
3. On May 13, 2003, and on June 4, 2003, the Student's case conference committee (CCC) convened to develop an IEP for the 2003-2004 school year (May 2003 IEP). The School proposed an LRE placement summarized as special education services and any related services in a separate classroom/program for 61% or more of the instructional day. Specifically, the May 2003 IEP called for the Student to receive all instruction in a special education placement, except for instruction in art, music and physical education. The Student would no longer be in a general education placement for science, health, or social studies. On June 9, 2003, the Complainant indicated disagreement with the May 2003 IEP by checking the following statement on the CCC Report form: "I/we disagree with the services recommended above and do not give permission for the plan to be implemented," and by writing "Not agreed to" next to the statement in the discussion notes that referenced the placement decision. The School implemented the May 2003 IEP as of May 13, 2003, until October 20, 2003.

4. On September 10, 2003, the Student's CCC reconvened. A new IEP (October 2003 IEP) for the Student was developed through a series of five CCC meetings during September and October, 2003. The initiation date of the October 2003 IEP was October 20, 2003, and the duration date was October 19, 2004. The LRE placement was summarized as special education services and any related services in a separate classroom/program for 61% or more of the instructional day. Specifically, the Student was to be in a special education placement for most of the school day, including for instruction in reading, spelling, math, and language arts, and to be in a general education setting for physical education, art, music and library to observe other students as they work and participate in classes, while the Student worked on the Student's own assignments, with the support of a paraprofessional. The October 2003 IEP did not call for the Student to be in a general education placement for science, health or social studies. The School implemented the October 2003 IEP as of October 20, 2003.
5. Following the October 20, 2003, CCC meeting, the School sought the Complainant's written consent for the implementation of the October 2003 IEP. The Complainant refused to sign the October 2003 IEP and suggested mediation to resolve the disagreement about the Student's participation in general education settings for science, health, and social studies as well as other issues.
6. On December 12, 2003, the School and the Complainant participated in a special education mediation session. The Complainant and the School's representative signed a Special Education Mediation Agreement (Mediation Agreement) that amended the October 2003 IEP. The School agreed that the Student's science, health, and social studies instruction in the special education placement would include introduction to grade level curriculum topics, with accommodations. While the Mediation Agreement noted the Complainant's continuing disagreement with the "location" (i.e., the educational placement) for instruction in science, health, and social studies, the Mediation Agreement incorporated the Complainant's consent to accommodated science, health, and social studies instruction in the special education placement "for now." The Mediation Agreement indicated that the CCC would reconvene January 13, 2004, to complete the IEP.
7. On January 13, 2004, the CCC reconvened. The IEP was reviewed, but not revised with respect to participation in general education science, health, or social studies classes. The LRE placement was not changed, and the CCC Report specifically noted that the current level of services/placement would continue. Complainant did not sign the signature page, nor did the Complainant write a note of disagreement.
8. On May 26, 2004, following a CCC meeting regarding ESY, the Complainant added a note expressing disagreement with the LRE placement (for the regular school year, not for ESY). The Complainant also specifically noted disagreement with the statement that the CCC had taken into consideration the potential harmful effects of the proposed placement.
9. As of the first day of the 2004-2005 school year, the Student's CCC had not reconvened.
10. Neither the School nor the Complainant requested a special education due process hearing at any time.
11. On October 18, 2004, the Student's CCC convened to develop, review, and revise the Student's IEP. The CCC did not complete its discussions and agreed to reconvene November 3, 2004. The Complainant gave oral consent for the continuation of the pre-existing IEP.

CONCLUSIONS:

1. Findings of Fact #3 and #4 indicate that an agreed-upon IEP was not in effect at the beginning of the 2003-2004 school year, and Finding of Fact #5 indicates that the disagreement continued. Although

Findings of Fact #6 and #7 indicate that an agreed-upon IEP was in effect after December 12, 2003, Finding of Fact #8 indicates that on May 26, 2004, the Complainant revoked consent to the change of placement for science, health, and social studies. Findings of Fact #9 and #10 indicate that steps to resolve the disagreement had not been taken prior to the beginning of the 2004-2005 school year. As a result of this combination of circumstances, there was not an agreed-upon IEP (or an IEP that did not involve a change of placement) in effect at the beginning of the 2004-2005 school year. Therefore, a violation of 511 IAC 7-27-7(e) is found.

2. Findings of Fact #3 and #4 indicate that in May and June, 2003, and again in September and October, 2003, the School proposed a change of placement from the placement described in Finding of Fact #2. Findings of Fact #3, #4, and #5 indicate that during the period from May 13, 2003, to December 12, 2003, the School implemented the change of placement without written parental consent. Although Findings of Fact #6 and #7 indicate that temporary, written parental consent for the change of placement was given on December 12, 2003, Finding of Fact #8 indicates that the Complainant revoked consent on May 26, 2004. Findings of Fact #9, #10, and #11 indicate that the disagreement about placement has not been resolved. Therefore, violations of 511 IAC 7-25-7(d) are found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

Kankakee Valley School Corporation and Cooperative School Services shall:

1. a. Reconvene the Student's case conference committee by November 5, 2004.
b. If the School has not received the Complainant's written consent for placement by November 16, 2004, the School shall initiate a special education due process hearing no later than November 19, 2004.
c. Mediation is also available as an option. If a jointly-signed Request for Mediation is received by the Division of Exceptional Learners before November 19, 2004, the School may postpone the initiation of a due process hearing until the mediation session has been conducted. If agreement on placement is reached through the mediation process, the School shall not be required to initiate a due process hearing.

Documentation of compliance (consisting of an agreed Case Conference Report and IEP or the Request for Hearing) shall be submitted to the Division of Exceptional Learners by November 19, 2004, unless the time has been extended to allow for mediation.

2. Inform case conference coordinators and administrators, by memorandum or through inservice training, that (2) when a parent disagrees with a proposed change of placement, the change of placement may not be implemented. If a parent will not give consent for a change of placement, the School must go to a due process hearing, unless the parent and the School reach an agreement on a different course of action. If consent is revoked after a student has started to receive services, the School must take action by requesting a due process hearing to resolve the dispute.

Documentation of compliance (consisting of the memorandum or written materials utilized in inservice training, with a list of addresses or participants) shall be submitted to the Division of Exceptional Learners by November 24, 2004.